

FIXING A REASONABLE DEFINITION AND STANDARD  
OF IDENTITY OF CERTAIN DRY MILK SOLIDS

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DECEMBER 18 (legislative day, DECEMBER 15), 1943.—Ordered to be printed

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Mr. CLARK of Missouri, from the Committee on Commerce, submitted  
the following

## REPORT

[To accompany H. R. 149]

Together with the

## MINORITY VIEWS

The Committee on Commerce, to whom was referred the bill (H. R. 149) to fix a reasonable definition and standard of identity of certain dry milk solids, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Extensive hearings were held on the bill by the House Committee on Interstate and Foreign Commerce. The report of the Committee on Interstate and Foreign Commerce follows and is made a part of this report.

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[H. Rept. No. 456, 78th Cong., 1st sess.]

This bill proposes to establish "a reasonable definition and standard of identity" for defatted milk solids. Under the definition proposed for the purposes of the Federal Food, Drug, and Cosmetic Act, nonfat dry milk solids, or defatted milk solids, would consist of the dried product of sweet milk of cows from which the cream has in whole, or in part, been removed. Such product shall not contain more than 5 percent of moisture nor over 1½ percent of fat, unless otherwise indicated.

Under the Food, Drug, and Cosmetic Act as now administered, by Government compulsion, dry milk solids containing less than the whole of the butterfat of milk is required to be sold under the designation of "skim."

The word "skim" is a term which stigmatizes the product to which it is applied because it carries the impression of inferiority or worthlessness.

Every article of merchandise is sold on its reputation, its good or bad name. The compulsory application of this bad name to a good product is inaccurate, unfair, and retards the use of this very valuable food product by millions of consumers of the country. The purpose of this bill is to remove that stigma from a valuable and wholesome food.

#### CONSUMER NEEDS

There are said to be over 30,000,000 people in the United States who do not directly use milk, either dry or liquid. Millions of these people are of the underprivileged class and suffer from malnutrition for the lack of a properly balanced diet, and particularly those qualities of a balanced diet that are contained in defatted milk solids. Of all the vast supply of separated milk in the United States, only a comparatively trivial amount of this valuable food product reaches the consumers who need it. There is probably no comparable source of an increased supply for human consumption of a food of so valuable a quality as that contained in defatted milk solids.

On account of its nutritional qualities, nutritive value, and its compact form defatted milk solids are in demand for military services and for lend-lease purposes. Ninety percent of the spray processed powder has been set aside by the Government for overseas shipment.

The advantage of compactness in getting food to England, to Russia, and to our armies overseas by cargo ship, through submarine-infested waters is obvious. It is a great saver of ships. Dry milk solids are roughly a tenth the weight of the liquid product from which derived without loss in food value. Besides the dried milk is comparatively free of the deteriorating influences to which liquid milk is susceptible.

The Federal Government also requires, by order of the Food Distribution Administration, that all white bread shall be enriched by the addition of milk solids.

#### CONSUMER RESISTANCE

The main use of dry milk solids in America has been in compounding them in the manufacture of food products rather than in their direct use. There is an important and more or less general resistance to a separate product required to be sold as skim milk.

There has been a greatly increased use of dehydrated products due to war demands and our lend-lease policy; yet the price for dried milk products is entirely out of line with that of other dried food products. The Government buying prices for dried eggs, beef, and pork last year were on an average of \$1.05, \$1.04, \$1.34 per pound, respectively, while the price for dried skim milk was 12.8 cents per pound. We are advised that on the basis of only the calories or energy furnished by these products, the prices for eggs, beef, and pork was more than five times as high as the price quoted for dried skim milk.

On the basis of both the energy and protein, the price paid for dehydrated beef was 11 times as high as the price for dried skim milk. The price for dried eggs was 14 times as high, and the price for dehydrated pork was 30 times as high.

The relative acceptance and use of dried milk by the consumer was out of all proportion to its relative value as human food.

It is difficult for a good product to sell under a bad name.

## ADMINISTRATIVE DENIAL OF RELIEF

Under section 401 of the Food, Drug, and Cosmetic Act, and the related Executive order, the Administrator of the Federal Security Agency, when in his judgment such action "will promote honesty and fair dealing in the interest of consumers," shall promulgate regulations fixing and establishing for any food, "under its common and usual name, so far as it is practicable, a reasonable definition and standard of identity."

Labels used in connection with the advertising or sale of such foods are required under severe penalties to conform to the definition so established.

On application of an interested industry, or a substantial portion thereof, stating reasonable grounds therefor, the Administrator shall hold a public hearing upon a proposal to issue, amend, or appeal any such regulation.

The original order fixing the definition and requiring the use of the word "skim" was made on July 6, 1940.

The dry-milk industry, with the cooperation of a large part of the dairy industry, has three times petitioned for a definition that would eliminate the word "skim" from the required name of dried-milk solids. Its petition has three times been denied. The first petition was filed on August 23, 1940, within 2 months of the original order. After the second denial, the industry came to Congress for relief, in the Seventy-seventh Congress. Under the suggestion that the industry and the Administrator get together and agree upon a satisfactory definition for this product, consideration of the matter by our committee was temporarily dropped. After a fruitless effort to secure relief by a satisfactory adjustment, the industry presented a formal petition requesting another hearing of the matter. The petition of the industry was alleged to be supported by 80 percent of the dry-milk industry and was also supported by a very substantial portion of the dairy industry of the country.

Among other things the petition stated:

We request that any regulation that may be issued, or amendment of the present regulation, shall eliminate any provision for the compulsory use of the words, "dried skim milk," "powdered skim milk," or "skim milk powder." We suggest that a standard of identity include the words, "dry milk solids" or "defatted milk solids," or other words which accurately define the finished product; that the standard should define the product and not the method of preparation or what is misconceived to be the method of preparation.

It will be noted that this petition asked for the elimination of the word "skim" from the definition and suggested the words "dry milk solids, or defatted milk solids, or *other words which accurately defined the finished product.*" With the word "skim" eliminated, the industry was satisfied to leave to the Administrator the selection of proper words to define the product. This proposal was rejected. The effort to secure this relief proved futile and the supporters of this legislation then turned to Congress as the only available source of relief from the injustice of the present stigma cast upon this product by existing regulations.

Prior to denial of this petition, the industry had sought an adjustment in the matter by conferences with the representatives of the Administrator. No adjustment was secured.

The last petition to the Administrator was presented January 13, 1943, and denied February 2, 1943.

## A COMMON NAME SO FAR AS PRACTICAL

An attempt was made at hearings to justify the refusal of the Administrator to relieve the situation by the claim that it was his duty to designate the common name of the food and that skim milk was the common name of the product from which dry milk solids are produced.

In the first place, the law gives a discretion to the Administrator.

In the second place the name selected should be an honest one and not deceptive.

There are two commonly used names which identify segregated milk solids. One identifies milk segregated by the process of skimming—skim milk—and the other, segregated by the use of the modern cream separator—separated milk. Each of the common names describes the product by the method of segregation. These processes will be described in more detail later.

From a practical standpoint there are no milk solids on the market produced by the skimming process. The only dry milk solids on the market are derived from the product which comes from the cream separator.

The two terms in contrast clearly identify the difference between skimmed milk and separated milk. In contrast, they not only indicated the difference in the method of segregation but also the more important difference in quality.

A true and accurate common name to apply to the product made by the cream separator was "separated milk."

"Skim milk" and "separated milk"—here were two names which commonly defined the two products respectively. If the administrative agency was contented to describe these products by the mere method of segregation, why did it not apply to milk solids segregated by the separator process the name of "separated milk" instead of the inaccurate and out-moded name of "skim milk"? A name essentially false was thus imposed on a product that was otherwise free from the stigma of skim milk. The common name accurately applicable was rejected.

## AN HONEST NAME

As indicated above, there are two commonly recognized methods of segregating the fat of milk from its other solids. One is the old method, hand skimming, and the other is by the modern cream separator. Each method resulted in a common name describing the product from the mechanical method of separating the solids rather than by a description of the qualities of the resulting products.

Skim milk, secured by the process of skimming, was ordinarily the residue product after milk had stood in pans for 1 or 2 days, then was hand skimmed. Ordinarily it was not under refrigeration. Bacterial changes promptly set in, breaking down the normal qualities of the residue of the milk. The skim milk thus secured was not only inferior in the sense that it was inferior to the whole milk. It was an inferior product also because of the deterioration suffered before the skimming took place.

Very frequently skim milk was handled under the most unsanitary conditions and was used principally for hog feed. In this manner the word "skim" in its historical origin, and in practice, came to designate an inferior article and much of it was unfit for human consumption. The prejudice against the name had its foundation in the facts.



Separation of solids from milk by the modern cream separator is an entirely different process. The milk, taken while fresh, uncontaminated and unchanged by bacterial action or unsanitary conditions, is placed in a separator and in a few minutes passes through the separator and is converted into cream and separated milk. Then this separated milk is placed in a modern dehydrator and in a few seconds it pours out of a machine in a stream of pure dry milk solids.

In each of these cases there was a segregation of the fat solids from the defatted milk solids, in the one case by skimming and in the other by separation. The effects upon the resulting product were radically different.

To apply to the product of a modern dehydrator that same name as was applied to the antiquated and discarded method of skimming milk is practically an absurdity, untruthful in its inferences, inaccurate in fact.

#### "SKIM" CARRIES A STIGMA

The Century Dictionary states:

Skim milk: Milk from which the cream has been skimmed; hence, figuratively, that which lacks substantial quality, as richness or strength; thinness; inferiority.

A large baker customer, about to launch an extensive advertising campaign on the fact that he enriched his bread with dry milk solids, on learning that the Food and Drug regulations prevented him from doing so unless he used the term "dry skim milk," abandoned his campaign.

The stigma of the term "skim" is so generally recognized as to furnish a very practical barrier to retard the use of the product. The compulsory use of that term is an injustice to the consumers of the country. The unfavorable reaction is reflected in the limited sales, or demands, for the product and the resulting injustice to the producers of the product.

The terms "dry milk solids" and "nonfat dry milk solids" are now extensively used in educational publications issued by universities, colleges, and experiment stations throughout the country and even in United States Government publications and orders. So that the word "skim" as widely recognized in educational and governmental, as well as dairy industry circles, is not fairly descriptive of the nonfat dry milk solids.

"Defatted milk solids," or "nonfat dry milk solids," are accurate descriptions of the product, without deception, without stigma and without injury to anyone.

The demand for the change of this unfortunate regulation comes from an important industry whose legitimate activities should be encouraged instead of handicapped by unwarranted administrative regulations.

#### PRACTICAL NUTRITIONISTS SUPPORT BILL

Among others, two of the most famous nutritionists of the country gave their impressive support.

One was Dr. E. V. McCollum, professor biochemistry, at the Johns Hopkins University, and the other, Dr. Ralph M. Wilder, a member of the staff of the Mayo Clinic, who is Chief of the Branch of Civilian Requirements of the Food Distribution Administration. Dr. Wilder is also a member of the Council of Foods, American Medical Associa-

tion, and of the National Research Council's Committee on Food and Nutrition. These two men of outstanding ability and experience, trained in the school of practical affairs, with a deep devotion to the service of their profession, realize the practical importance of this legislation and give it their heartiest endorsement. Among other things, Dr. McCollum said:

It is my hope that your committee will approve and Congress will pass H. R. 149 in order to do justice to an excellent food product.

The term "dry skim milk," which is now the legal name for dry milk solids, is unfair and untrue; it means inferiority and I'll tell how that came about.

But first, let me say that this product, which we want legally to call "dry milk solids" is now recognized by all nutritionists as the most valuable part of milk. It is also our greatest undeveloped food resource. If its development had been encouraged instead of being held back by a bad name, and we now had twice or three times as much milk powder for overseas shipment, our present emergency food problem would be greatly simplified.

It is another case of short-sightedness—"too little, too late."

The historical reason why "skim" is a bad name is this: People were taught years ago that only the cream or fat of milk was valuable. Besides, the skimming method was primitive; milk stood for hours without refrigeration to let the cream rise; it deteriorated, and often the "skim" milk was only fit for hog feed. "Skim milk" came to mean hog feed and still does in the minds of most people.

Dry milk solids or defatted milk solids today are made from sweet separated milk. This milk is cooled immediately after milking and taken to modern manufacturing plants by quick transport. There it is put through a mechanical cream separator, shot under the pressure to the drier, and becomes powder within a few seconds. There has been no deterioration as in the old-fashioned skimming process. In a food so delicate as milk this is of first importance.

#### THE ADMINISTRATIVE REGULATION AS TO SKIM MILK IS A BARRIER TO BETTER NUTRITION IN THIS COUNTRY

Here are some excerpts from Dr. Wilder, of the Mayo Clinic:

\* \* \* the nonfat milk solids are of great importance, representing perhaps the most valuable form of protein food there is and containing also one of the most important sources of riboflavin. Riboflavin is a vitamin which is not provided abundantly by any other foods. Calcium, a mineral which is not provided abundantly by other foods also is best supplied by milk.

The main reason, however, for the value of nonfat solids in milk is because of their content of certain essential amino acids not found to a corresponding degree in many other foods \* \* \*.

There is a very wide agreement among nutritionists that the use of the word "skim" creates a resistance on the part of the public to the acceptance of this product \* \* \*.

We are anticipating that a large production of these dry milk solids will be needed. We need that product badly to supply the export requirements for Lend-Lease and for foreign relief that we shall be engaged in. The Army is using large amounts of material of this type \* \* \*.

When the war is over we shall have these large plants for manufacturing these dry milk solids. Many of us hope that when the war is over we can have this product accepted by the public at large and sold in the grocery stores in packages. Experience has shown, however, that the public while accepting this so-called skim-milk product when they do not know that it is at present mixed with other foods, resist it when you try to sell it to them as "skim milk" solids.

I see no purpose in obstinately setting up a psychological barrier to the accomplishment of better nutrition in this country \* \* \*. My feeling is that it is impractical to use the name "skim milk"; impractical from the standpoint of getting the wide use we want to have.

I also feel that the name is not perfectly honest and, therefore, the use of that name, "skim milk," I consider is not promoting honesty. The implication of the name is an untruth. The implication of the name is that you are trying to distribute something that is inferior, whereas, as a matter of fact, you are trying to distribute something that is nutritionally very superior \* \* \*.

My feeling is that the words "nonfat" or "defatted" would not be misleading \* \* \*. You are leaning over backward in giving the public something more than they expect to receive when you call it "defatted."

I think it is very important for the future prosecution of the war and in the future nutrition of this country, that we get this product widely distributed, and for that reason, as I say, speaking solely for Dr. Wilder, nobody else, appearing here only as a citizen of the United States, I feel strongly in this matter and would like to see a change made in that name.

As stated by Dr. Wilder, the insistence on the word "skim" is obstinately setting up a psychological barrier to the consumption of this useful produce. It sets up a barrier to better nutrition in this country. He states it is impractical to use the word "skim" from the standpoint of getting the widest use of dry milk. He also feels that the name is not perfectly honest. The implication of the name is an untruth as applied to defatted milk produced by the modern methods.

#### SUPPORTERS OF LEGISLATION

Extensive hearings were held upon this question in both the present and in the last Congress.

A substantial majority of the dairy industry of the United States desires this legislation. Among them is the National Cooperative Milk Producers Federation representing 60 farmer-owned and controlled cooperative associations in 40 States, with a membership in excess of 260,000. The American Dry Milk Institute represents in excess of 75 percent of the dry-milk manufacturers in the United States. Evidence was presented showing endorsement of the bill by numerous State dairymen's associations, manufacturers of dairy products, and many individual dairymen and manufacturers. While dry-milk manufacturing and production is a small part of the whole dairy industry, yet a large proportion of that industry does participate in dry-milk production.

Proponents of the bill included numerous educators, heads of the dairy departments of State colleges and universities, including those of a dozen States. Educators appearing as witnesses favoring the legislation included Prof. C. A. Iverson, head, dairy department, Iowa State College; Dr. Ouida Davis Abbott, head, department of home economics, University of Florida; Prof. C. L. Roadhouse, head, dairy industry division, University of California; Prof. B. W. Fairbanks, department of animal industry, University of Illinois.

Also included among the proponents were a number of State department of agriculture officials. Numerous editorials from the farm press, newspapers, and industry publications have given their aid.

The bakers, who are the largest users of the product, were represented in their support of the bill by such organizations as the American Bakers Association, and the American Institute of Baking, and by several witnesses.

A large number of persons and organizations appeared and approved of the legislation, as indicated by the hearings, pages 144-146.

This legislation is of especial interest to the enlightened and humane class of our people who are interested in the welfare of children and their relief from the evils of malnutrition.

Dr. Ouida Davis Abbott, of the University of Florida, who has given so much of her life in behalf of children, presented striking

information indicating the importance of getting this valuable dry milk product out to the underprivileged children of the country.

She referred to the grocer who wanted nothing to do with "skim milk" in a community where there was so much need for dry milk solids.

Asked to express an opinion as to whether the use of the word "skim" to identify this milk tends to retard its use, she replied:

It does in the store, certainly. We have the most trouble with the grocers. I think I can control the little group I am working with, but not the grocer and the other people.

Here follows report of the Federal Security Agency on H. R. 7002 of the Seventy-seventh Congress, an identical bill to H. R. 149 of the present Congress:

FEDERAL SECURITY AGENCY,  
Washington, June 15, 1942.

Hon. CLARENCE F. LEA,  
Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 28, 1942, requesting a report relative to H. R. 7002, a bill to increase agricultural purchasing power and to meet the need of combating malnutrition among the people of low income by defining and making certain a reasonable definition and standard for nonfat dry milk solids.

This bill proposes to establish a definition and standard for the food to which it refers for the purposes of the Food, Drug, and Cosmetic Act.

As you may recall, pursuant to and by virtue of the provisions of section 401 and 701 (e) of the Federal Food, Drug, and Cosmetic Act, a definition and standard of identity for this food was established under date of July 6, 1940, and published in the Federal Register of July 12, 1940 (copy attached).<sup>1</sup> This action was taken in accordance with the law after proper hearing and findings of fact. Thereafter an effort was made to invalidate the order by a petition to the Circuit Court of Appeals of the Eighth Circuit (*Twin City Milk Producers Ass'n et al. v. McNutt, Federal Security Administrator (American Dry Milk Institute, Inc., et al., Interveners)*), 122 Fed. (2d) 564, 123 Fed. (2d) 396). The order was approved and affirmed.

If enacted, H. R. 7002 will have the effect of amending this definition and standard of identity as follows:

*Present Food and Drug Regulation*

Dried Skim Milk, Powdered Skim Milk, Skim Milk Powder, is the food made by drying sweet skim milk.

It contains not more than five percent of moisture, as determined by the method prescribed in Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists, Fourth Edition, 1935, page 282, under the caption "Moisture—Tentative".

The term "skim milk" as used here in means cows' milk from which the milk fat has been separated.

*Proposed by H. R. 7002*

Dry Milk Solids or Defatted Milk Solids is the product resulting from the removal of fat and water from milk, and contains lactose, milk proteins, and milk minerals in the same relative proportions as in the fresh milk from which made.

It contains not over 5 per centum moisture.

The fat content is not over 1½ per centum unless otherwise indicated.

The term "milk," when used herein, means sweet milk of cows.

<sup>1</sup> Not printed.



The principal issue presented by the proposed bill is as to the name under which the product is to be sold. The names permitted under the present food and drug regulation are "Dried Skim Milk," "Powdered Skim Milk," and "Skim Milk Powder." At the hearing prior to the adoption of this regulation the contention was advanced that the use of the term "skim milk" is arbitrary and unreasonable because it tends to create a derogatory impression in the public mind of the quality or the food value of the product. It was developed that manufacturers had been fostering the use in the trade of the designation "Dry milk solids not over 1½ percent fat." The evidence showed that consumers are unfamiliar with this designation, that it is not correctly descriptive of the product, and that it is misleading. From the record it was apparent that, if the adoption of such a designation would promote the sale of the product, this would be accomplished only through deception of consumers.

Relative to this point the circuit court of appeals (122 Fed. (2d) 568) said:

"It is further contended that the use of the term 'skim milk' is arbitrary and unreasonable, because it tends to create a derogatory impression in the public mind of the quality or food value of the product. The American Dry Milk Institute, which was an association of producers of skim milk powder, had been trying to foster the use in the trade of the designation 'Dry milk solids not over 1½ percent fat,' and petitioners and interveners asked the Administrator to adopt this term.

"The statute required the Administrator, in fixing a definition and standard of identity for a food, to do so 'under its common or usual name so far as practicable.' What was the common or usual name of the food product here involved, and whether its use in a regulation would be practicable for administrative purposes, were questions for the Administrator, on which we would not be at liberty to disturb his determination, if based upon substantial evidence. Such substantial evidence is contained in the record in this case. The Administrator was not required to hold it impracticable, for regulation purposes, to use what the evidence sufficiently showed to be the common or usual name of a product among ultimate consumers, merely because such a designation might not be as conducive to sales by producers as some term of commercial coinage and glossing. The Administrator's obligation under the statute was simply the promotion of honesty and fair dealing in the interest of consumers. While he would have no right to adopt a designation for the purpose of destroying trade in a legitimate food product, there could ordinarily be no arbitrariness involved in using the common or usual name of such a product for regulation purposes."

An important feature of the Food, Drug, and Cosmetic Act which has proved of great value to consumers is its requirement of informative labeling of food and drug products. To insure that consumers will be neither misled nor confused by the names employed on labels, the act requires that labels of foods and drugs bear their "common or usual" names, and the "common or usual" names of ingredients. Although in the present case it has been found that milk from which the milk fat has been separated and moisture removed is commonly known as dried skim milk, powdered skim milk, or skim milk powder, H. R. 7002 seeks a designation of this food as dry milk solids or defatted milk solids. At best these proposed names are confusing; at worst, thoroughly deceptive.

Dried skim milk is a valuable food, but it should be sold for what it is. No good is to be accomplished by so changing the definition and standard as to create the impression that the product in question is not a skim-milk product. Even if this should accelerate sales temporarily, it is probable that producers and marketers would find in time that the consuming public has discovered the product's mislabeling and reacted accordingly.

Since enactment of the bill would weaken the consumer protective features of the food and drug law and would create a wholly undesirable precedent, I recommend that it not be enacted.

This Agency is advised by the Bureau of the Budget that there would be no objection to the submission of this report to your committee, as it is not believed that this legislation could be considered as being in accord with the program of the President.

Sincerely yours,

PAUL V. McNUTT, *Administrator.*

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## MINORITY VIEWS

In my opinion it is very necessary that a minority report should be submitted against the enactment of H. R. 149. The bill should not be passed by the Senate, mainly for the following reasons:

(1) The bill runs counter to a well-established policy of the Federal Government.

(2) The bill is repugnant to the chief purpose of the Federal Food, Drug, and Cosmetic Act of June 25, 1938. The law was enacted for the protection of consumers.

(3) The bill's purpose is to substitute a confusing and misleading name for the common and usual name of a food product.

(4) The effect of the bill is to have the Congress discharge administrative duties which the Federal Food, Drug, and Cosmetic Act authorizes an agency of the Government to administer.

(5) The enactment of the bill will establish a dangerous precedent and will result in other bills being introduced to alter labels designated by the Administrator on foods, drugs, and cosmetics.

(6) The bill seeks to substitute the usual and common name of "dried skim milk, powdered skim milk, skim milk powder" with the unusual, confusing, and deceptive name of defatted milk solids and nonfat milk solids.

(7) The rechristening measure is sponsored by commercial interests producing and distributing the product and is opposed by groups representing the consuming public.

(8) The definition and standard of identity for "dried skim milk, powdered skim milk, skim milk powder" by the Administrator of the Food, Drug, and Cosmetic Act, after hearing, was sustained by the Circuit Court of Appeals, Eighth Circuit, September 9, 1941 (*Twin City Milk Producers Association et al. v. McNutt, Federal Security Administrator*, 122 Fed. 2d 564).

The intent of the bill is completely at variance with the sound principles of honesty and fair dealing in labeling prescribed by the Food, Drug, and Cosmetic Act of June 25, 1938. That measure, the result of 5 years of serious legislative study, adopted "honesty and fair dealing in the interest of consumers" as a basic policy. In pursuance thereof it requires that each food for which a definition and standard is set up be labeled by its common or usual name.

The Federal Food, Drug, and Cosmetic Act of June 25, 1938 (title 21, ch. 9, U. S. Code, p. 1857), provides:

Whenever in the judgment of the Administrator such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. (Sec. 341, p. 1862, U. S. Code.)

The act further declares:

A food shall be deemed to be misbranded—  
If its labeling is false or misleading in any particular.

\* \* \* \* \*

If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon

with such conspicuousness \* \* \* and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use (sec. 343, p. 1863, U. S. Code).

The act further provides that, where there is no representation as to definition and standard of identity, nevertheless the common or usual name of the food must appear upon the label.

Hence, the chief purpose of labeling is to acquaint the consuming public with what it is buying under its common or usual name.

The advocates of the pending measure now propose to depart from a sound and straightforward principle embodied in our law and enacted in the interest of the consuming public. They propose to adopt, by legislative enactment, new and strange names for a product long known as "dried skim milk," "powdered skim milk," and "skim milk powder." The bill proposes to substitute for these common and usual names, which are unmistakably truthful and informative, two new names, "nonfat dry milk solids" or "defatted milk solids," which must necessarily be confusing, unenlightening, and misleading to consumers.

I object to the establishment of a precedent by the Congress which will encourage vendors of food products who find difficulty in disposing of their produce when honestly labeled to believe that they can secure legislative support for the substitution of confusing and uninformative names. If the Congress takes this first step in the way of breaking down the principle of honesty in labeling, which is so fundamental a part of the Food, Drug, and Cosmetic Act of June 25, 1938, it most certainly will be faced with identical demands for relaxations of the law whenever a sufficiently influential group believes that its commercial interests can be furthered by similar legislation.

One may well ask whether, having begun the process of breaking down the Food, Drug, and Cosmetic Act, there are any logical reasons for resisting further efforts at emasculation. The most casual review of food labels now on the market reveals that manufacturers in general have met the requirements of the new law sincerely and honestly. An inquiring consumer can readily learn the identity of a food without resort to a lexicon. Is there any reason why the manufacturers of "dried skim milk" should be legislatively set apart as a favored class by permitting them to evade the requirement for straightforward and informative labeling? In all fairness, if the Congress proposes to accord this special privilege to the manufacturers and vendors of "dried skim milk," should it not give identical favors to all food manufacturers?

In passing the Federal Food, Drug, and Cosmetic Act, Congress wisely concluded that the details of establishing definitions and standards of foods under their common or usual names were matters for administrative rather than legislative control. It laid down comprehensive procedures which are binding upon the Administrator for the establishment of definitions and standards. As a further safeguard against arbitrary action by the Administrator it provided for a review of each such definition and standard by the appropriate circuit court of appeals of the United States whenever the Administrator's action was questioned.

The Administrator of the Federal Security Agency, proceeding in exact compliance with the terms of the Food, Drug, and Cosmetic Act, established a definition and standard for "dried skim milk," "powdered skim milk," or "skim milk powder," and made a finding



that this food product is commonly known under these names. Upon appeal the Administrator's action was affirmed by the Circuit Court of Appeals for the Eighth Circuit.

In the course of its opinion the court said:

The Administrator was not required to hold it impracticable, for regulation purposes, to use what the evidence sufficiently showed to be the common or usual name of a product among ultimate consumers, merely because such a designation might not be as conducive to sales by producers as some term of commercial coinage and glossing. The Administrator's obligation under the statute was simply the promotion of honesty and fair dealing in the interest of consumers. While he would have no right to adopt a designation for the purpose of destroying trade in a legitimate food product, there could ordinarily be no arbitrariness involved in using the common or usual name of such a product for regulation purposes (122 Fed. 2, 568).

Now, to circumvent this legally correct action of the Administrator, a commercial group seeks to have this action set aside by legislation—set aside, not in the interest of the consumer, but solely to benefit the manufacturer.

If the Congress, after action by the Administrator in full conformity with the mandate laid down by itself in the Food, Drug, and Cosmetic Act and sustained by the court of appeals, now proceeds by legislative enactment to adopt the names "nonfat dry milk solids" or "defatted milk solids" as substitutes for the common or usual names "dried skim milk," "powdered skim milk," and "skim milk powder," it will have departed from the legislative and invaded the administrative field.

The passage of this rechristening measure is sponsored by those having direct commercial interests in the production and distribution of dried skim milk. It is clear that they seek to rename this product in the belief that they will acquire a commercial advantage by confusing purchasers as to the real identity of the product. Testimony was presented, in the course of the House hearings on this bill, by consumer groups supporting the general principle of honesty in labeling inherent in the Food, Drug, and Cosmetic Act, and protesting against any surrender of this principle. Groups with such Nationwide representation as the National Congress of Parents and Teachers and the General Federation of Women's Clubs testified that "skim milk powder" is recognized by consumers under that name as a wholesome and useful product and that there is no sales resistance to its purchase under that name. They represent the same groups that advocated the passage of the Food, Drug, and Cosmetic Act and the inclusion therein of rigid provisions calling for honest and informative labeling.

Common honesty demands that all foods be sold under names that clearly identify them for what they are. To make a legislative exception to this rule for the benefit of one influential commercial group betrays the sound principle of honesty and fair dealing in the interest of the consumer.

I supported the labeling provisions of the Food, Drug, and Cosmetic Act when its passage was under consideration by the Senate, and I cannot, in all sincerity, fail to oppose a measure which will serve as an entering wedge in breaking down a vital provision in one of the most important pieces of legislation enacted by the Congress in recent years.

JOHN H. OVERTON.



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

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